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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,636	07/24/2001	Elliot Schwartz	05168.P002	6340

40418 7590 03/23/2006

HEIMLICH LAW
5952 DIAL WAY
SAN JOSE, CA 95129

EXAMINER

VU, THONG H

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/912,636

Applicant(s)

SCHWARTZ, ELLIOT

Examiner

Thong H. Vu

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/02</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 1-27 are pending.

Response to Arguments

2. Applicant's arguments filed 2/13/06 with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. It was well-known in the network art that the first layer is the physical layer and the second layer is link layer. It was unclear if the applicant claimed the first layer is TCP and the second layer is HTTP then the network architecture, as claimed, without using the physical layer and link layer is impossible to communication. Examiner can not determine what applicant intended scope and Examiner can not determine without undue experimentation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Bavadekar [2003/0009571 A1] .

4. As per claim 1, Bavadekar discloses a computer network architecture comprising:

a first layer including a transmission control protocol connection [Bavadekar, TCP connection, 0050];

a second layer including a hyper text transfer protocol connection built upon the first layer [Bavadelar, HTTP tunnel, 0050];

a first tunneling layer including a first tunneling protocol built upon the second layer to tunnel a message through the hyper text transfer protocol connection; and a multiplexing layer to multiplex a plurality of messages for transmission through the first tunneling layer [Bavadelar, HTTP tunnel may multiplex packets from the clients onto TCP connection, 0050].

5. As per claim 2, Bavadekar discloses the first tunneling protocol (i.e.: TCP) opens the HTTP connection between a server and a client [Bavadekar, 0050].

6. Claims 10-11,19-20 contain the similar limitations set forth of apparatus claims 1-2. Therefore, claims 10-11,19-20 are rejected for the similar rationale set forth in claims 1-2.

7. As per claim 3, Bavadekar discloses a second tunneling layer (i.e.: HTTP tunnel) including a second tunneling protocol (i.e.: HTTP protocol) built upon the first layer to tunnel a message through the TCP connection [Bavadekar, 0050].

8. As per claim 4, Bavadekar-Pujare disclose the second tunneling protocol is used to open the TCP connection between the server and the client [Bavadekar, 0050].

9. As per claim 5, Bavadekar-Pujare disclose tunneling protocol opens the HTTP connection if the second tunneling protocol is not successful in opening the TCP connection [Bavadekar, 0050].

10. As per claim 6, Bavadekar-Pujare disclose the messages include binary format [Pujare, digital signals, 0155].

11. As per claim 7, Bavadekar-Pujare disclose the plurality of messages includes a plurality of operational messages and a plurality of administrative messages [Bavadekar, administrative control, 0038].

12. As per claim 8, Bavadekar-Pujare disclose the operational messages include operational data [Pujare, parameter, 0148].

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13. As per claim 9, Bavadekar-Pujare disclose the administrative messages can be selected from the group consisting of debug messages, firmware update messages and parameter configuration messages [Pujare, update options, parameter,0148].

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Thong Vu*, whose telephone number is (571)-272-3904. The examiner can normally be reached on Monday-Thursday from 6:00AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Andrew Caldwell*, can be reached at (571) 272-3868. The fax number for the organization where this application or proceeding is assigned is 571-273-8300

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PMR or Public PMR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thong Vu
Primary Examiner
Art Unit 2142

